

1 David Fink (pro hac vice)
7519 Apache Plume
2 Houston, TX 77071
Tel.: (713) 729-4991
3 Fax.: (713) 729-4951
texascowboy6@gmail.com
4

5 Duncan M. McNeill
1514 Van Dyke Avenue
6 San Francisco, CA 94124
Tel.: (650) 994-2295
7 Fax: (650) 994-2297
dmcneill1@netzero.com
8 Fed. Bar No. 136416

9 Attorneys for the Plaintiff
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12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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16 FUZZYSHARP TECHNOLOGIES
INCORPORATED,

17 Plaintiff,

18 vs.
19

20 NVIDIA CORPORATION,

21 Defendant.
22 _____
23
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Civil Action No. 3:12-CV-06375 JST

PLAINTIFF FUZZYSHARP
TECHNOLOGIES CORPORATION'S
OPPOSITION NVIDIA
CORPORATION'S MOTION TO
DISMISS FUZZYSHARP'S AMENDED
COMPLAINT

Date: July 18, 2013
Time: 2:00 PM
Court: Courtroom 9, 19th Floor
Judge: Jon S. Tigar

25 Plaintiff FuzzySharp Technologies Incorporated ("FST") respectfully submits this
26 Opposition to the Motion to Dismiss submitted by Nvidia Corporation "Nvidia".
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PLAINTIFF FUZZYSHARP TECHNOLOGIES CORPORATION'S OPPOSITION NVIDIA CORPORATION'S
MOTION TO DISMISS

FuzzySharp Technologies Incorporated v. Nvidia Corporation

Civil Action No. 3:12-CV-06375 JST

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1 **Legal arguments**

2 Nvidia fails to acknowledge the incredibly low requirements for a Complaint for patent
3 infringement as stated explicitly by the CAFC. Instead, Nvidia prefers to rely on *Twombly* and
4 its progeny despite the holding of an *en banc* decision by the CAFC:

5 *In re Bill of Lading Transmission & Processing Sys* stated:

6 Accordingly, to the extent the parties argue that
7 *Twombly* and its progeny conflict with the Forms
8 and create differing pleading requirements, the
9 **Forms control.** (emphasis added)

10 The CAFC also points out that Form 18 of the Federal Rules of Civil Procedure requires a
11 **minimum** number of allegations for direct infringement:

12 (1) an allegation of jurisdiction; (2) a statement that
13 the plaintiff owns the patent; (3) a statement that
14 defendant has been infringing the patent ‘by
15 making, selling, and using [the device] embodying
16 the patent’; (4) a statement that the plaintiff has
17 given the defendant notice of its infringement; and
18 (5) a demand for an injunction and damages.

19 Nvidia has not disputed that it sells products that carry out steps infringing both patents-
20 in-suit.

21 The primary thrust of *Twombly* and its progeny is good notice. In addition to meeting the
22 requirements of the CAFC at least for Count One of the Complaint, Nvidia has not disputed the
23 contents of good notice of its infringement, despite a typing error. The error in Count Two is
24 serious and acknowledged.

25 It is true that the prior attorneys for Fuzzysharp may have shown more professional
26 cooperation with Nvidia while the appeal for the *3DLabs* case was pending; however, it is
27 respectfully pointed out that the CAFC sent the *3DLabs* case back to the District Court, and
28 thereby left the issue of validity for another day. Perhaps the first case against Nvidia should
have been held in abeyance, rather than being forced into a Dismissal without prejudice.

1 Nvidia complains that there is no factual support for a claim of willful infringement and
2 refers to *Twombly* and *Iqbal* as to the requirements of good notice.

3 Nvidia has clarified this issue by admitting that at page 3 of its Brief that FuzzySharp
4 previously sued on the same patents. Thus, Nvidia has admitted that it had notice of the asserted
5 infringement and has continued its infringing activities.

6 **CONCLUSION**

7 It is respectfully submitted that at least Count One should be left intact and the Motion
8 should address only Count Two.

9
10 THE PLAINTIFF

11 FUZZYSHARP TECHNOLOGIES

12 INCORPORATED

13 Date: June 14, 2013

14 By: /S/ David Fink
15 David Fink
16 Attorney for Plaintiff
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